

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

OLIVER A. PENTIMAKI, JR.,

Plaintiff,

v.

LT. ALBERTS and OFFICER PAYNE,

Defendants.

ORDER

10-cv-194-slc

Plaintiff Oliver Pentimaki is proceeding in this case on a claim that defendants Lt. Alberts and Officer Payne used excessive force against him in violation of the Eighth Amendment. Now before the court is plaintiff's motion for appointment of counsel. Dkt. 29.

As a starting point, this court would appoint a lawyer to almost every pro se plaintiff if lawyers were available to take these cases. But they are not. Most lawyers do not have the time, the background or the desire to represent pro se plaintiffs in a pro bono capacity, and this court cannot make them. So the court only appoints counsel in cases where there is a demonstrated need, using the appropriate legal test.

As a first step plaintiff must make a reasonable effort to find a lawyer on his own. *Jackson v. County of McLean*, 953 F.2d 1070 (7th Cir. 1992). Plaintiff states that he has contacted three law firms that have declined to represent him. That is enough of an attempt, but it is only the first step.

Next, the court must consider both the complexity of the case and the pro se plaintiff's ability to litigate it himself. *Pruitt v. Mote*, 503 F.3d 647, 654-55 (7th Cir. 2007). Plaintiff says that he is unable to afford counsel and that his imprisonment will greatly limit his ability to litigate his case. Also, plaintiff speculates that after his release from the Wisconsin Resource

Center, his release will be revoked in a matter of days and that he will then be incarcerated in the Dane County Jail, where he will be severely limited in litigating this case.

This all may be true, but at this stage in the proceedings plaintiff appears capable of representing himself. To help plaintiff in this regard, this court instructs pro se litigants at a preliminary pretrial conference, which will be scheduled after the defendant files an answer, about how to use discovery techniques available to all litigants so that he can gather the evidence he needs to prove his claim. In addition, pro se litigants are provided a copy of this court's procedures for filing or opposing dispositive motions and for calling witnesses, both of which were written for the very purpose of helping pro se litigants understand how these matters work.

As for the complexity of the case, there is nothing in the record to suggest that this case is factually or legally difficult. Plaintiff has personal knowledge of relevant events and he should be able to obtain through discovery documents he needs to prove his claim. In sum, I am not persuaded that plaintiff's case is so complex or his skills so lacking that appointment of counsel is warranted at this time. The motion will be denied without prejudice to petitioner bringing it at a later stage in his lawsuit.

ORDER

IT IS ORDERED that plaintiff's motion for appointment of counsel, dkt. #29 is DENIED.

Entered this 16th day of August, 2010.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge